



STATE OF INDIANA

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November 22, 2010

Mr. Joseph E. Allman
445 N. Pennsylvania St., Ste. 401
Indianapolis, IN 46204

Re: Formal Complaint 10-FC-255; Alleged Violation of the Access to Public Records Act by the Henry County Sheriff's Department

Dear Mr. Allman:

This advisory opinion is in response to your formal complaint alleging the Henry County Sheriff's Department (the "Sheriff") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*

BACKGROUND

In your complaint, you allege that on September 16, 2010, the Sheriff received your written request for access to "documents, photographs, videotapes and tape recordings" related to the death of Ryan Pruet. As of October 20th, you had not received a response.

My office forwarded a copy of your complaint to the Sheriff. A. Howard Williams, legal deputy for the Sheriff, responded on the Sheriff's behalf. Mr. Williams states that he acknowledged your request and informed you that he would respond to you with more detail by the following week. However, that response was delayed because Mr. Williams was not aware of the number of documents that would be responsive to your request. He claims that approximately 500 pages of records and some compact discs must be reviewed and analyzed to determine whether they contain confidential information. That process is ongoing, and Mr. Williams would like to hear from you about how to proceed regarding expected copying fees.

ANALYSIS

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, Mr. Williams states that he acknowledged your request. If he did so within seven days of receiving it, the Sheriff complied with the APRA.

Regarding the Sheriff's delay in producing your requested records, there are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Considering that approximately 500 documents are responsive to your request and must be reviewed for confidential or nondisclosable information prior to their release, it is my opinion that the Sheriff has sustained its burden to demonstrate that it acted reasonably. However, an additional significant delay (i.e., beyond December 31st of this year) by the Sheriff would, in my opinion, not be reasonable. As you know, if an agency persists in denying access to records following the issuance of an advisory opinion from this office and you believe the denial is in violation of the APRA, your remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that Sheriff did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: A. Howard Williams.